IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10620 OF 2004

Smt. Sudha Ramchandra Bhat ... Petitioner

V/s

Mrs. Jona Michael D'Mello & anr. ... Respondents

Mr. P.B. Shah for the petitioner.
Mr. A.J. Almeida for the respondent No.1.
Mr. M.H. Solkar, A.G.P. for the Resp. No.2 State.

CORAM: P.V. KAKADE, J.
DATED: 7TH MARCH, 2006

P.C.:

1. Heard learned counsel for the petitioners as well as respondent Nos. 1 & 2. Perused the record.

2. This petition is preferred against the order passed by the Civil Judge, Jr.Divn., Vasai, dated 25.11.2004 on the application Exh.21 in Regular Darkhast No. 1 of 2004 rejecting the application which was filed under Sec. 47 of the Code of Civil Procedure to seek dismissal of the execution proceeding on the ground that there was creation of fresh tenancy between the parties at the instance of the landlord as he had accepted the rent subsequent to the ex-parte decree passed against the present petitioner.

3. It was submitted on behalf of the petitioenr that, no particular was given to the petitioner to argue the case or produce the relevant documents before passing the impugned order below application Exh.21. For that purpose, the copy of the roznama was also brought to my notice. The contention that no opportunity was given to be heard before the order was passed has to be rejected forthwith on the basis of the copy of the roznama itself because it shows that the present petitioner had filed an application Exh.24 seeking permission to produce the written and oral evidence on record in support of the application. Though the other side had contested the application, the opportunity appears to have been given to the petitioner to lead the evidence. Not only this, but the record also shows that written arguments were allowed to be filed. Moreover, the impugned order itself shows that advocates of both parties were heard before passing of the order. The learned counsel for the petitioner submitted that the roznama dated 25.11.2004 shows that advocate for the petitioner was absent on that day. However, there is nothing on record to show that the arguments were heard on the very day i.e. 25.11.2004 though the order was passed on that day. Under the circumstances, it cannot be said that

the petitioner was not given proper opportunity to lead the evidence.

4. It was submitted that fresh tenancy was created between the parties by acceptance of rent subsequent to the ex-parte decree against the petitioner. However, the contents of the impugned order show that the learned Trial Judge has properly dealt with that aspect and has come to the conclusion that the fact that rent was accepted subsequent to the decree does not show that it was consciously agreed between the parties to enter into fresh lease and unless landlord clearly gave up his right under the eviction order already passed by the Court. This is especially so when the petitioner failed to avail the remedy under Order 9 Rule 13 of the Code of Civil Procedure, which is pending admission. Under the circumstances, I do not see any merit in the petition and it stands dismissed with no order as to costs.

5. At this stage, the learned counsel for the petitioner submitted that the interim order protecting the petitioner on eviction may be continued for some time. In view of the facts and circumstances, the interim order passed by this Court shall continue for

four weeks from the date of this order.

6. It further appears that the State is made respondent No.2. However, name of respondent No.2 State stands deleted.

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